

The ERC on Whistle Blowing on Workplace Misconduct: Attitude Matters

In December 2010, the Ethics Resource Center (ERC) released a White Paper entitled, “*Blowing the Whistle on Workplace Misconduct*.” This White Paper report detailed several findings that the ERC had determined through surveys, interviews and dialogues. Although the article reviewed types of misconduct broader than the compliance and ethics sphere, we believe that the ERC’s findings can be of particular use to the Foreign Corrupt Practices Act (FCPA) compliance practitioner in designing, assessing and revising a company’s whistle-blower program.

Need to Report Misconduct?

The ERC began by discussing some of the results of its own 2009 survey entitled, “*Reporting: Who’s Telling You What You Need to Know, Who Isn’t and What Can You Do About It*”. This report determined that over 60% had observed and reported misconduct within their respective companies, most usually to an internal authority. This led the ERC to conclude that almost 40% of employees who had observed misconduct did not step forward to report it and noted that convincing employees to step forward when they do observe misconduct is a challenge for any compliance practitioner. ERC opined that to remedy this situation, some companies have linked ethical conduct to performance reviews to make clear that good behavior is a job expectation. Other companies, believing that some workers do not report violations because they fear retaliation, have set up hotlines that assure reporting can be done in private with less risk of being seen by a co-worker. Even Congress have gotten into the whistle blower’s action, with the inclusion of legal protections for whistleblowers and the establishment monetary rewards for tipsters to encourage insiders to come forward with information that could send wrongdoers to jail for US securities violations in the 2010 Dodd-Frank Act.

Retaliation and Methods of Reporting

The ERC 2009 Survey also found that up to 15% of employees who had reported misconduct felt that they had been retaliated against. The retaliation conduct had ranged from receiving the cold shoulder from fellow employees to job loss or even felt threatened by physical retaliation. This finding was contrasted with the discovery that almost all who reported misconduct did not use an anonymous reporting hotline but directly to another person in the company. The reason for this was that most employees felt that their reports would be taken more seriously if there were shared face-to-face with someone else in the company. This reporting was to both immediate supervisors and upper management.

The ERC believes that understanding the method by which employees choose to report misconduct can assist a company to understand the motivation involved in reporting and how to encourage that motivation. ERC has confidence that informs the compliance practitioner that the decision by an employee to report to one’s direct supervisor versus higher management is related to the ethical culture and climate of the workplace. In strong ethical cultures, with a tone at the top that makes it clear that ethics do matter; where supervisors aggressively reinforce the ethics

message; and where both employees and managers alike are held to high ethical standards, more employees report to their direct supervisor. Conversely, reporting to higher management increases in weaker cultures and among employees who feel pressure not to report such misconduct or for those employees who are not confident that their direct managers are fully committed to strong ethics. These concerns may also include the fear of retaliation for reporting misconduct. However, it may be that employees simply lack confidence that their direct supervisor will pursue their reports. In those instances, turning to senior management can provide the safety of the organizational structure and a belief that higher management has the resources to address the issue effectively.

A Culture of Ethics Matters

The ERC notes in its White Paper report that the key take-away from all of the data is that a culture of ethics within a company does matter. Such a culture should start with a strong commitment to ethics at the top, however it is also clear that this message must be reinforced throughout all levels of management, and that employees must understand that their company has the expectation that ethical standards are vital in the business' day-to-day operations. If employees have this understanding, they are more likely to conduct themselves with integrity and report misconduct by others when they believe senior management has a genuine and long-term commitment to ethical behavior. Additionally those employees who report misconduct are often motivated by the belief that their reports will be properly investigated. Conversely, most employees are less concerned with the particular outcome than in knowing that their report was seriously considered.

For the FCPA compliance practitioner the message would seem clear. It is not just "Tone at the Top" but also in the middle and below. If all employees have a reasonable belief in an ethical culture, these same employees can be your best resource to prevent, deter and detect any compliance violations going forward. The ERC ends its White Paper by noting that when a company succeeds at building an ethical culture, with strong training programs and committed management, reporting of misconduct goes up and wrongdoing goes down. Attitude matters. If you wish to boost the odds of ethical conduct in your company, attitude and culture are places for focus.

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